

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Carroll Country Mountain View Nursing Home

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid sick pay

Employer: Carroll County Mountain View Nursing Home, PO Box 152
Ossipee, NH 03864

Date of Hearing: December 4, 2014

Case No.: 49084

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$3,113.43 for 76.49 hours of unpaid sick pay which she alleges was due upon her separation of employment. She argues the written policy for vacation pay states, “** Note – All employees leaving employment with the County with appropriate 2 weeks’ notice, will receive 100% of their accrued time, paid out on the final check.” She argues that accrued time as used in this statement, under the Vacation Policy, refers to accrued vacation and sick time.

The employer denies the claimant is due any further sick pay. The written sick policy states, in relevant part, “Sick time will be paid at the employee’s regular base rate of pay, due to illness or non-work related injury of the employee.” They argue the policy is clear that this is the only circumstance under which a payment of sick pay is made. Further, the claimant’s argument that a statement under the vacation policy should be applied the sick policy is not valid.

FINDINGS OF FACT

The claimant resigned from employment with the employer. She subsequently received payment of twelve days, or ninety-six hours, of sick pay. She argues she is due the balance of her sick pay, \$3,113.43, or 76.49 hours.

RSA 275:49 III requires that the employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment practices and policies regarding sick leave pay. Lab 803.03 (b) requires employers to provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all other fringe benefits per RSA 275: 49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The statute does not require an employer to provide payment of sick pay upon separation from employment. The statute does require to provide the parameters of the sick pay policy in writing.

The employer's policy explicitly states the circumstances under which payment of sick pay is made. The sick pay policy reads, in relevant part, "Sick time will be paid at the employee's regular base rate of pay, due to illness or non-work related injury of the employee."

The Hearing Officer finds this written policy provides the only possible scenario for the payment of sick pay.

The employer has an unwritten practice of paying employees who separate from employment in good standing, twelve days or ninety-six hours of sick pay. The employer paid the claimant according to this practice.

The claimant's argument that the statement under the vacation policy that "*** Note – All employees leaving employment with the County with appropriate 2 weeks' notice, will receive 100% of their accrued time, paid out on the final check" is not persuasive. The vacation and sick pay policies are clearly titled and on separate pages of the employee handbook.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that she is due the claimed sick pay under the written policy and past practice of the employer.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43 V considers sick pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she is due any sick pay, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: December 11, 2014

MJD/slh